In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1604

RICHARD FIELD PIETERS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

After a jury-waived trial in the United States District Court for the Central District of California, petitioner was convicted of having wilfully refused to submit to induction, in violation of 50 U.S.C. App. 462. The court of appeals affirmed *per curiam*, relying on *Brown* v. *United States*, 409 F. 2d 1354 (C.A. 9), and *Blades* v. *United States*, 407 F. 2d 1397 (C.A. 9) (Pet. App. A).

As the record shows, petitioner asserted conscientious objector beliefs for the first time in a written

statement submitted to induction station officials on the date he was to be inducted into the Army. Although his formulation differs somewhat from that in other cases, petitioner in effect seeks review of the broad question on which the courts of appeals are divided—*i.e.*, whether under 32 C.F.R. 1625.2 the alleged crystallization of conscientious objector beliefs after the mailing of an induction order may be considered by a local board as the basis for reopening a registrant's classification and whether, if not, the regulation (which allows a local board to reopen at this stage only where there has been a change in status "resulting from circumstances over which the registrant had no control") is authorized by the pertinent statute (50 U.S.C. App. 456(j)).

Certiorari was recently granted by this Court in another Ninth Circuit case presenting that issue. *Ehlert* v. *United States*, 422 F.2d 332, certiorari granted, May 4, 1970, No. 1383, 1969 Term. In *Ehlert*, however, the registrant did not wait until the last possible minute to assert his claim, but submitted it to the members of his local board rather than to personnel at the induction station who are without authority to change his classification or consider the information.[1] In *Blades*, *supra*, relied on by the court below, the Ninth Circuit expressed its disagreement with the decision of the Second Circuit in *United States* v. *Stafford*, 389 F. 2d 215, where the

[1] A case identical to the instant one is *Jones* v. *United States*, No. 2027 Misc., 1969 Term, pending on petition for a writ of certiorari; see also *United States* v. *Holmes*, No. 1311, 1969 Term, pending on petition for a writ of certiorari.

induction station was treated as merely an extension of the local board and a registrant was permitted to raise a last-minute, written C.O. claim in a manner identical to that done by petitioner here. In another case, *United States* v. *Holmes*, No. 1311, 1969 Term, the government is seeking review of a similar Second Circuit decision allowing a registrant validly to proffer a last-minute, *oral* claim of conscientious objection at the induction station. In our certiorari petition in that case we have pointed out, *inter alia*, that we believe the result in *Blades* (as opposed to *Stafford*) to be correct irrespective of whether, under the regulation involved, a registrant is entitled generally to raise before the local board a C.O. claim alleged to have matured upon receipt of the notice to report for induction. Thus, we regard the result in this case (and in *Jones*, *supra*, note 1) as sound irrespective of the outcome in *Ehlert*. However, in view of the fact that the Court's opinion in *Ehlert* may shed light on the narrower issue presented here, it would seem appropriate to defer action on the instant petition until after *Ehlert* is decided.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1970.

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